

Enterprise, Innovation and Networks Committee

EIN(2) 02-07 (p.3)

Date: 14 February 2007

Venue: Committee Room 2, National Assembly for Wales

Title: The Highways (Environmental Impact Assessment) Regulations 2007

Purpose

1. To provide the Committee with an opportunity to scrutinise the draft Regulations and make available the Explanatory Memorandum. The Committee has asked for the opportunity to scrutinise the regulations.

Recommendation

2. That the Committee should consider the purpose and content of the draft Regulations.

Purpose of draft Regulations

3. The purpose of the draft Regulations is to transpose Article 3 of the Public Participation Directive (2003/35/EC).

Summary of what the Regulations do

4. These Regulations amend the procedures contained in Part VA of the Highways Act 1980 for the environmental impact assessment ("EIA") of projects for the construction or improvement of highways for which in England the Secretary of State, and in Wales the National Assembly for Wales, are respectively the highway authority. These highways are for the most part trunk roads.
5. They do so to improve public participation in the decision making process relating to those of such projects which are subject to EIA, (i.e. those projects which may have significant effects on the environment), and also to make provision for legal challenge of decisions to carry out such projects. These changes are to give effect, for such projects, to article 3 of the Public Participation Directive (2003/35/EC).
6. They also:
 - (a) replace references to Member States of the European Community with references to Member States of the European Economic Area in order to bring Part VA of the Highways Act 1980 into line with other UK regulations relating to EIA;
 - (b) assimilate for consistency the criteria for determining if motorway improvement projects of the Secretary of State or National Assembly

should be subject to EIA with the criteria applied to their other trunk road projects and to local highway authority projects; and

(c) make provision for improving the scope of consultation by expanding the list of consultation bodies (i.e. the list of public bodies with environmental responsibilities which the Secretary of State, or the National Assembly for Wales as the case may be, should consult about proposed highway projects subject to Part VA of the Highways Act 1980).

Consultation on the Regulations

7. The Department for Transport led a 12-week consultation exercise on behalf of England and Wales that commenced on the 21st September 2006 and closed on the 14th December 2006. The consultation document was published on the Department for Transport's web site. There was also a link to the consultation from the Welsh Assembly Government's web site. Letters inviting representations were despatched to 690 consultees. These comprised a wide range of public sector bodies with responsibilities for highways, land use planning and the environment, and a wide range of motoring groups, professional associations, lobby groups and other stakeholders. A full list of consultees is attached to the Explanatory Memorandum. Annex B
8. Consultees included agencies or organisations with interests specific to Wales including for example Cadw, the Countryside Council for Wales, and the Welsh Local Government Association
9. Eight responses were received. They were from the Council for National Parks, Durham County Council, the Highways Agency (an executive agency of the Department), the Law Society, Mott MacDonald, Natural England, Neath Port Talbot Borough Council and the Royal Society for the Protection of Birds.
10. The responses were supportive or content with the proposals although some concerns were raised see Annex C of the Explanatory Memorandum. However after consideration of those concerns no amendments to the draft Regulations were thought appropriate.

Timetable for progressing draft Order

11. Subject to the Assembly's approval process and the process of Westminster Parliament, the Regulations will come into force on 20 April 2007.

Financial Implications

12. The changes introduced by these Regulations are largely procedural. However the Public Participation Directive and these Regulations will impose some minor additional obligations on the Assembly since it is

already responsible for preparing an environmental statement in the case of projects falling within Annex I or Annex II of the EIA Directive. The additional costs arising from the changes are therefore expected to be small and will be accommodated within existing administration cost budgets.

13. However failure to implement these Regulations would almost certainly result in the European Commission continuing with infraction proceedings against the United Kingdom and the potential imposition of substantial fines if the case is referred to the European Court of Justice and until compliance has been achieved.

Action for Subject Committee

14. To consider and scrutinise the purpose and effect of the draft Regulations. A copy of the draft Regulations, Explanatory Memorandum and the Regulatory Impact Statement Assessment can be seen at Annexes A, B and C. Any comments made by the Committee will be incorporated into the draft Explanatory Memorandum which is due to be with the Assembly Business Unit on 6 March 2007.

Andrew Davies
Minister for Enterprise, Innovation and Networks

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STATUTORY INSTRUMENTS
2007 No.

HIGHWAYS, ENGLAND AND WALES

The Highways (Environmental Impact Assessment) Regulations
2007

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|-------------------------------|------|
| <i>Made</i> - - - - | 2007 |
| <i>Laid before Parliament</i> | 2007 |
| <i>Coming into force</i> - - | 2007 |

The Secretary of State for Transport in relation to England and the National Assembly for Wales in relation to Wales make the following Regulations in exercise of the powers conferred by—

- (a) section 2(2) of the European Communities Act 1972(1); and
- (b) section 56(1) of the Finance Act 1973(2).

The Secretary of State and the National Assembly have been designated (3) for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment and to which these regulations relate.

By section 29(4) of the Government of Wales Act 1998(4) the power conferred upon Ministers by section 56(1) of the Finance Act 1973 may also be exercised by the National Assembly in relation to any services etc to which section 56(1) relates which are provided by the National Assembly.

The Secretary of State and the National Assembly have received the consent of the Treasury to the making of these Regulations as required by section 56(1) of the Finance Act 1973 and section 29(4) of the Government of Wales Act 1998.

Citation, commencement, and interpretation

1.—(1) These Regulations may be cited as the Highways (Environmental Impact Assessment) Regulations 2007 and shall come into force on 2007.

(2) In these Regulations “the 1980 Act” means the Highways Act 1980 (5).

Environmental impact assessments

2.—(1) Section 105A of the 1980 Act (6) (environmental impact assessments) is amended as follows.

(2) In subsection (1)—

(1) 1972 c.68. The enabling powers of section 2(2) were extended by the amendment of section 1(2) of the Act by section 1 of the European Economic Area Act 1993 (c.51).
(2) 1973 c.51.
(3) The Secretary of State is so designated by S.I. 1988/785. The National Assembly is so designated by S.I. 2000/2812.
(4) 1998 c.38.
(5) 1980 c.66.
(6) Section 105A was inserted by regulation 2 of the Highways (Assessment of Environmental Effects) Regulations 1999 (S.I. 1999/369).

- (a) omit the definition of “the Directive”; and
- (b) omit “and” at the end of the definition of “Annex” and after this definition insert—
 - ““the Directive” means Council Directive No. 85/337/EEC(7) on the assessment of the effects of certain public and private projects on the environment;
 - “member of the public” includes any body of persons corporate or unincorporate;
 - “public authority” means any authority or other body on which functions are conferred by or under an enactment, including an enactment comprised in, or an instrument made under, an Act of the Scottish Parliament; and”.

(3) In subsection (3) for “publish an environmental statement” substitute “prepare an environmental statement and publish notice of it in accordance with subsections (3), (3A) and (7) of section 105B”.

Procedure

- 3.—(1) Section 105B of the 1980 Act (8) (procedure) is amended as follows.
- (2) Omit subsection (2).
 - (3) In subsection (3) for “An” substitute “Notice of the”.
 - (4) After subsection (3) insert—
 - “(3A) The notice must state—
 - (a) that the Secretary of State, as the relevant highway authority, is considering implementing the project;
 - (b) the proposed location and nature of the project;
 - (c) that the project is subject to the environmental impact assessment procedure required by this Part of this Act and, where relevant, that section 105C applies;
 - (d) that a copy of the environmental statement may be inspected at an address in the area in which the project is proposed to be situated during the period specified under paragraph (i);
 - (e) the times at which the copy of the environmental statement may be so inspected;
 - (f) an address from which copies of the environmental statement may be obtained and from which further information about the project may be requested during the period specified under paragraph (i);
 - (g) if a charge is to be made for a copy of the environmental statement, the amount of the charge;
 - (h) if the Secretary of State uses a website for the publication of information about projects that are subject to the procedure required by this Part of this Act, that a copy of the environmental statement may be inspected on the website during the period specified under paragraph (i);
 - (i) that any person wishing to make any representations about the project and the environmental statement may do so in writing to the Secretary of State at a specified address within a specified period, being not less than 6 weeks from the date of publication of the notice and
 - (j) that the Secretary of State will take into consideration any representations so made before deciding whether or not to proceed with the project with or without modifications.
 - (3B) The Secretary of State shall ensure that during the period specified under subsection (3A) (i)—

(7) OJ No. L175, 5.7.85, p 40, as amended by Council Directive No. 97/11/EC, OJ No. L73, 14.3.97, p 5 and Directive No. 2003/35/EC of the European Parliament and Council, OJ No. L156, 25.6.03, p 17.

(8) Section 105B was inserted by regulation 2 of the Highways (Assessment of Environmental Effects) Regulations 1999 (S.I. 1999/369). Subsection (8) (b) was amended by the Natural Environment and Rural Communities Act 2006 (c.16), Schedule 11, Part 1 paragraph 63.

- (a) copies of the environmental statement are available for inspection by any person free of charge at all reasonable hours at the address specified under subsection (3A) (d);
- (b) copies of the environmental statement are available to be obtained by any person from the address specified under subsection (3A) (f); and
- (c) where under subsection (3A) (h) the notice states the address of a website, that a copy of the environmental statement is available for inspection by any person on that website.

(3C) A reasonable charge reflecting the costs of printing, copying and distribution may be made by the Secretary of State for the supply of a copy of the environmental statement—

- (a) to a person other than a consultation body, or
- (b) to a consultation body to which one copy has already been supplied free of charge.

”.

(5) In subsection (4) omit “published details of the”.

(6) In subsection (5) omit “and” at the end of paragraph (a) and for paragraph (b) substitute—

“(b) any opinion on that statement or the project which is expressed in writing by—

- (i) any of the consultation bodies; or
- (ii) any other person;

and is received by the Secretary of State within any period specified for the purpose by him; and

- (c) where section 105C applies, and the EEA State has indicated in accordance with subsection (4) of that section that it wishes to participate in the procedure required by this Part of this Act, any opinion on that statement or the project which is expressed in writing by—

- (i) the EEA State;
 - (ii) a member of the public in the EEA State; or
 - (iii) an authority having environmental responsibilities designated by the EEA State to be consulted about the project under Article 6 (1) of the Directive;
- and is received by the Secretary of State within any period specified for the purpose by him.”.

(7) After subsection (5) insert—

“(5A) Where in order to proceed with the construction or improvement in relation to which an environmental statement has been made it is necessary for the Secretary of State to make—

- (a) an order or scheme to which Schedule 1 to this Act applies; or
- (b) a compulsory purchase order in the exercise of highway land acquisition powers;

the Secretary of State shall, so far as it is practicable to do so, take the steps required of him by this Part of this Act concurrently with the corresponding steps required of him by Schedule 1 to this Act or, as the case may be, the Acquisition of Land Act 1981⁽⁹⁾ in connection with the making of the related instruments.”.

(8) In subsection (6)—

- (a) after “subsection (5)” insert “, and describing the right under section 105D (1) to challenge the validity of the decision,”;
- (b) at the end of paragraph (b) omit “and”;
- (c) at the end of paragraph (c), insert “and”;
- (d) after paragraph (c) insert—

⁽⁹⁾ 1981 c.67. This Act was amended by the Planning and Compulsory Purchase Act 2004 (c.5).

“(d) information about the consultation carried out in compliance with this section and section 105C, the representations received on consultation, and any changes made as a result of those representations.”.

(9) In subsection (7) for the words from “shall be” to the end substitute—

“shall be—

- (a) in the London Gazette;
- (b) in at least one local newspaper circulating in the area in which the project for the construction or improvement of the highway is proposed to be situated; and
- (c) if the Secretary of State uses a website for the publication of information about projects that are subject to the procedure required by this Part of this Act, on that website.”.

(10) For subsection (8) substitute—

“(8) In this section “the consultation bodies” means—

- (a) any principal council as defined in subsection (1) of section 270 of the Local Government Act 1972⁽¹⁰⁾ for the area where the land is situated;
- (b) where the land is situated in England—
 - (i) Natural England and English Heritage; and
 - (ii) any organisation referred to in paragraph (c) (i) where, in the opinion of the Secretary of State, the land is sufficiently near to Wales to be of interest to the organisation;
- (c) where the land is situated in Wales—
 - (i) Cadw and the Countryside Council for Wales; and
 - (ii) any organisation referred to in paragraph (b) (i) where, in the opinion of the Secretary of State, the land is sufficiently near to England to be of interest to the organisation;
- (d) the Environment Agency; and
- (e) any other public authority which has environmental responsibilities and which the Secretary of State considers to be likely to have an interest in the project.”.

Other EEA States

4.—(1) Section 105C of the 1980 Act ⁽¹¹⁾ (other Member States) is amended as follows.

(2) In subsections (1) to (6) for each reference to “Member State” or “a Member State” substitute “EEA State” or “an EEA State” as appropriate.

(3) In subsection (2) for paragraph (c) substitute—

“(c) such information about the procedure required by this Part of this Act as he considers appropriate; and”.

(4) In subsection (4)—

- (a) for “in the environmental impact assessment procedure” substitute “in the procedure required by this Part of this Act”;
- (b) omit “and” at the end of paragraph (a); and
- (c) for paragraph (b) substitute—

“(b) the information required by subsection (3A) of section 105B to be included in the notice under subsection (3) of that section; and

⁽¹⁰⁾ 1972 c.70.

⁽¹¹⁾ Section 105C was inserted by regulation 2 of the Highways (Assessment of Environmental Effects) Regulations 1999 (S.I. 1999/369).

- (c) any information about the procedure required by this Part of this Act which he considers it appropriate to give and which has not already been given to the EEA State.”.
- (5) For subsection (7) substitute—

“(7) Where an EEA State has been consulted in accordance with subsection (4) the Secretary of State must, after deciding whether to proceed with the project to which the environmental statement relates, inform the EEA State of the decision and give it documents containing the matters referred to in section 105B (6).”.
- (6) Omit subsection (8).
- (7) In the heading to the section, for “Member” substitute “EEA”.

Validity of decisions

5. After section 105C of the 1980 Act insert the following section—

“Validity of decisions

105D.—(1) If a person aggrieved by a decision of the Secretary of State to proceed with the construction or improvement for which an environmental statement has been made desires to question the validity of the decision on the ground that—

- (a) it is not within the powers of this Act; or
- (b) any requirement of this Part of this Act has not been complied with in relation to the decision;

he may, within 6 weeks from the date on which the decision is first published under section 105B (6), make an application for the purpose to the High Court.

(2) On any such application, the Court—

- (a) may by interim order suspend the operation of the decision, or any aspect of it, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings; and
- (b) if satisfied that the decision is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any requirement of this Part of this Act, may quash the decision or any aspect of it, either generally or in so far as it affects any property of the applicant.

(3) Subject to subsection (2), a decision to which subsection (1) applies shall not be questioned in any legal proceedings whatever.”.

Wales

6. In Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999(12), the reference to the 1980 Act is to be read as a reference to the 1980 Act as amended by these Regulations.

Application

- 7.—(1) These Regulations do not apply to a project in relation to which—
- (a) the Secretary of State or the National Assembly for Wales has before the commencement date given public notice of an environmental statement prepared under section 105A of the 1980 Act; or
 - (b) a draft order or scheme has been published before the commencement date; or
 - (c) the works contract has been let before the commencement date.

(2) In this regulation—

“commencement date” means the day on which these Regulations come into force;

“draft order or scheme” means any draft order or scheme to which Schedule 1 of the 1980 Act applies or any draft compulsory purchase order prepared in the exercise of any land acquisition powers of the Secretary of State or of the National Assembly for Wales, as the case may be, under sections 239, 240, 242 to 246(13) and 250(2) of the 1980 Act; and

“works contract” means a contract for the construction of a new highway or the improvement of an existing highway.

Signed by authority of the Secretary of State for Transport

2007

Name
Minister of State
Department for Transport

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998

2007

Name
The Presiding Officer of the National Assembly for Wales

We consent to the making of these Regulations

2007

Names
Two of the Lords Commissioners of Her Majesty’s Treasury

(13) Section 245A was inserted by the Traffic Management Act 2004 (c.18), section 13 and has been brought into force in relation to England, but not in relation to Wales.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the procedures contained in Part VA of the Highways Act 1980, (“the Act”), for the environmental impact assessment of projects for the construction or improvement of highways for which in England the Secretary of State and in Wales the National Assembly for Wales (“the authorities”) are respectively the highway authority, (i.e. these highways are for the most part trunk roads).

Part VA was incorporated into the Act by the Highways (Assessment of Environmental Effects) Regulations 1999, (S.I.1999/369), in order to implement, in relation to such projects, the amendments made to Council Directive 85/337/EEC (“the Directive”) (OJ No L175, 5.7.85, p 40), on the assessment of the effects of certain public and private projects on the environment, by Council Directive 97/11/EC (OJ No L73, 14.3.97, p 5).

The Regulations transpose article 3 of Directive 2003/35/EC (“the Public Participation Directive”) of the European Parliament and Council, (OJ No L 156, 25.6.03, p 17), which amends the Directive with regard to public participation and access to justice. In particular the Regulations provide that the words “the Directive” as used in Part VA means the Directive as amended by the Public Participation Directive (*regulation 2(2) (a) and (b)*). They specify requirements for public notice of environmental statements and the procedure for members of the public, and certain consultation bodies, to make representations in relation to such environmental statements and the projects to which they relate (*regulations 2(3), 3(3) – (6) and (9)*). When decisions on projects are published additional information is to be included with the publication (*regulation 3(8)*). Express provision is inserted into Part VA for challenge, by way of application to the High Court, of decisions to proceed with projects for which environmental statements have been made (*regulation 5*). Equivalent amendments are also made to the provisions in Part VA which relate to EEA States, (see below), (*regulations 3(6) (c) and 4(3) to (5)*).

Where environmental statements are produced in connection with projects for which orders or schemes under Schedule 1 of the Act or compulsory purchase orders under the Acquisition of Land Act 1981 are required, the authorities are made under a duty, so far as it is practicable to do so, to take the steps required by Part VA concurrently with the corresponding steps required in relation to such orders or schemes (*regulation 3(7)*).

In addition to transposing article 3 of the Public Participation Directive, together with some minor and associated amendments, the Regulations make other amendments to Part VA. They substitute references to Member States of the European Economic Area, (“EEA States”), for references to Member States of the European Community (*regulations 2(2)(b), 3(6), and 4(2), (4)(c), (5), (6) and (7)*). The effect is to extend the application of Part VA to enable EEA States which are not also EC Member States, (i.e. Iceland, Liechtenstein and Norway), to participate in addition to EC Member States in the procedures in Part VA for notification and consultation on such projects if they are likely to have a significant environmental effect on those States.

The effect of regulation 3(2) is to apply section 105A (3) (b), (which provides for the criteria for determining if projects within Annex II of the Directive should be made subject to an environmental impact assessment), to “special road” projects of the authorities which are within Annex II in the same way as it applies to their other highway projects within Annex II. (“Special roads” are highways reserved for particular classes of traffic and are defined in section 16 of the Act. They are mostly motorways.)

The definition of “consultation bodies” in section 105B (8) is widened, (*regulation 3(10) and definition of “public authority” in regulation 2(2) (b)*).

Regulation 6 provides that the reference to the Act in the National Assembly for Wales (Transfer of Functions) Order 1999 shall be read as a reference to the Act as amended by these Regulations.

Regulation 7 makes transitional provisions.

A regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

To: Business Committee

From: Andrew Davies AM
Minister for Enterprise, Innovation and Networks

EXPLANATORY MEMORANDUM

HIGHWAYS, ENGLAND AND WALES

THE HIGHWAYS (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2007

Summary

These Regulations amend the procedures, contained in Part VA of the Highways Act 1980, for the environmental impact assessment of projects for the construction or improvement of highways for which in England the Secretary of State and in Wales the National Assembly for Wales (“the authorities”) are respectively the highway authority, i.e. trunk roads (and certain other highways).

1. This Memorandum is submitted to the Assembly's Business Committee in relation to The Highways (Environmental Impact Assessment) Regulations 2007, in accordance with Standing Order 25 section 3.
2. A copy of the Instrument is submitted with this Memorandum.

Enabling Power

3. The National Assembly for Wales has been designated under section 2(2) of the European Communities Act 1972 to make regulations for the purpose of implementing Community requirements for the assessment of highway projects likely to have a significant effect on the environment (EC Designation Order (SI 2000/2812)). The Assembly and the Secretary of State are acting together to make regulations for England and Wales; the Secretary of State as respects England and the Assembly as respects Wales. The consent of the Treasury to the making of these regulations is required under S56 (1) of the Finance Act 1973.

Effect

4. These Regulations would make three principal changes to Part VA of the Highways Act 1980 ('the Act').
 - Firstly, they transpose those provisions of Directive 2003/35/EC (the Public Participation Directive) which amends Directive 85/337/EEC (the Environmental Impact Assessment (EIA) Directive) with regard to public participation and access to justice. The Public Participation Directive is one of the legislative instruments that transpose the provisions of the United Nations Economic Commission for Europe's Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (known as the

Aarhus Convention) into Community Law. Article 3 of the Directive amends the Environmental Impact Assessment (EIA) Directive in order to align the public participation provisions of the EIA Directive with the Aarhus Convention and add provisions with regard to access to justice to comply with the Convention. These provisions help to ensure that the importance of the predicted environmental effects, and the scope for reducing them, are properly understood by the public and the relevant authority before it makes a decision;

- Secondly, the effect of regulation 3(2) is to apply the procedures in section 105A (3)(b) of the Highways Act 1980, (which set out the criteria for determining if projects within Annex II of Directive 85/337/EEC (the EIA Directive) should be subject to an environmental assessment), to “special road” projects of the Secretary of State and Assembly in the same way as these procedures apply to other highway projects of the Secretary of State and which are within Annex II. (“Special roads” are highways reserved for particular classes of traffic and are defined in section 16 of the Act - they are mostly motorways). This is in pursuance of Article 4 of the EIA Directive;
- Thirdly, they amend Part VA of the Act to reflect the application of Directive 85/337/EEC (the EIA Directive) to the European Economic Area (EEA) by Decision No.20/1999 of the European Economic Area Joint Committee of 26 February 1999 (regulations 2(2)(b), 3(6) and 4(2), 4(c), (5), (6) and (7)). The effect is to extend the application of Part VA to enable States which are EEA States but not also EC Member States, (i.e. Iceland, Liechtenstein and Norway), to participate in the procedures for notification and consultation on trunk road projects in England and Wales if they could have some environmental effect on those States.

Target Implementation

5. It is intended that these Regulations will go to Plenary on 21 March 2007 and then be forwarded to the Parliamentary Branch of the Department for Transport to lay before Parliament. The Regulations should come into force on 20 April 2007.

6. If the intended target date for Plenary is not met, it will delay the laying of this Regulation in Parliament, which will ultimately delay the coming into force date of the Joint Regulations in both England and Wales.

7. Failure to make these Regulations would almost certainly result in the European Commission continuing with infraction proceedings against the United Kingdom and the potential imposition of substantial fines if the case is referred to the European Court of Justice and until compliance has been achieved.

Financial implications

8. The changes introduced by these Regulations are largely procedural, but include publicity arrangements that have cost implications although these are

generally small and would be accommodated within existing administration cost budgets.

9. Part VA of the Highways Act 1980 presently provides for the environmental assessment of projects for the construction and improvement of highways for which the Assembly is the highway authority. The Public Participation Directive and these Regulations would impose some minor additional obligations on the Assembly. The consultation and publicity currently undertaken, and met from the existing budget, satisfies most of the requirements of the Environmental Impact Assessment (EIA) Directive. The anticipated additional procedural costs are likely to arise from the supplementary consultant and publicity costs involved in informing the public about the reasoning and decisions taken.

10. These additional costs are estimated to be £30,000 to £50,000 pa and would be met from the Improving Trunk Road Network budget of £56m pa ie just 0.05-0.09%.

Regulatory Appraisal

11. As these Regulations fall outside the definition of Assembly subordinate legislation in section 58 of the Government of Wales Act 1998, a Regulatory Appraisal is not required to be undertaken.

Consultation

With Stakeholders

12. A public consultation on the provisions of these Regulations was carried out between 21 September 2006 and 14 December 2006. The Department for Transport led this consultation on behalf of England and Wales. A list of those consulted is attached at Annex A.

13. Eight responses were received and a summary of the responses and the conclusions is at Annex B.

With Subject Committee

14. The Regulations were first notified to the then Economic Development and Transport Committee via the list of forthcoming legislation on 26 January 2006 (EDT(2) 02-06 (p.4)) and they are due to be considered by the Committee on 14 February 2007. They appeared on the list as The Highways (Assessment of Environmental Effects) (England and Wales) (Amendment) Regulations 2006.

15. The Regulations were also notified to the Environment, Planning and Countryside Committee via their forward look of the intention to make these Regulations, on 13 July 2006 (EPC(2)-11-06 (p9) Annex A. Meeting Reference: EPC2 16-06). The Committee did not identify them for scrutiny.

Recommended Procedure

16. Subject to the views of Business Committee, I recommend that these Regulations proceed to Plenary under the Standard procedure to give Assembly Members the opportunity to debate them.

Compliance

17. The proposed legislation will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 section 120);
- be compatible with the Assembly's scheme for sustainable development (section 121);
- be compatible with Community law (section 106);
- be compatible with the Assembly's human rights legislation (section 107); and
- be compatible with any international obligations binding the UK Government and the Assembly (section 108).

18. The information in this Memorandum has been cleared with the Legal Services Department (LS).

19. Drafting lawyer: Elaine Osborne, ext. 5663

20. Head of Division: Tony Parker, ext. 6252

21. Drafting Policy Officials: Harriet Cozens, ext. 5678
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ANDREW DAVIES

MINISTER FOR ENTERPRISE, INNOVATION AND NETWORKS

?? March 2007

**Consultation on The Highways (Environmental Impact Assessment)
Regulations 2007**

List of organisations consulted on an England Wales basis

Government - Regional and local bodies; Arms length bodies

Local Highway/Transport Authorities in England
Local Planning Authorities in England
Regional Assemblies
Regional Development Agencies
Regional Planning Bodies in England

Commission for Integrated Transport
Countryside Agency
English Heritage
English Nature
English Tourist Board
Environment Agency
Transport for London

Motoring groups, professional associations, lobby groups, and other stakeholders

Association of British Drivers
Association of National Park Authorities
AA Motoring Trust
The Bar Council
Brake
British Chambers of Commerce
British Horse Society
Byways and Bridleways Trust
Campaign to Protect Rural England
Chartered Institute of Logistics and Transport
Confederation of British Industry
Confederation of Passenger Transport UK
Council for National Parks
Country Land and Business Association
Countryside Alliance
Disabled Drivers' Association & Disabled Drivers' Motor Club (Mobilise Organisation)
Federation of Small Businesses
Freight Transport Association
Friends of the Earth
Green Alliance
Greenpeace
Institution of Highways and Transport
Land Access and Recreation Society

Law Society
Living Streets
Local Government Association
National Farmers Union
National Playing Fields Association
National Society for Clean Air and Environmental Protection
National Trust
Open Spaces Society
Planning Officers Society
RAC Foundation
Ramblers Association
Road Haulage Association
Royal Institution of Chartered Surveyors
Royal Society for the Protection of Birds
Royal Society for Wildlife Trusts
Royal Town Planning Institute
Sustrans
Town and Country Planning Association
Transport 2000
Transport Planning Society
The Woodland Trust
Youth Hostels Association

Organisations specific to Wales

Campaign for the Protection for Rural Wales
Cadw
CBI Wales
Civic Trust for Wales
Countryside Council for Wales
Environment Agency Wales
Forest Enterprise
National Farmers Union Cymru
National Playing Fields Association Cymru
The National Trust
Ramblers' Association Wales
Sustrans Cymru
The Woodland Trust Wales
Visit Wales
Wales Social Partners Unit
Welsh Local Authorities
Welsh Local Government Association
Welsh Assembly Government - Department for the Environment, Planning
and Countryside

Annex B

THE HIGHWAYS (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2007

Summary of consultation responses

| COMMENT | CONCLUSION |
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| <u>Respondent 1</u> - Content | Noted |
| <u>Respondent 2</u> - Added whether the regulations needed to be widened to cover other issues e.g. health and general amenities | Regulations are designed to be consistent with the precedent of the equivalent powers of the High Court which already exist in relation to orders and schemes which relate to trunk road projects. |
| <u>Respondent 3</u> - Content | Noted |
| <u>Respondent 4</u> - Welcomes the Regulations | Noted |
| <u>Respondent 5</u> - In principle welcomes but raises some legal points | Please see attached for full response to comments. |
| <u>Respondent 6</u> - Large response – welcomes the transposition of the Public Participation Directive but is critical of the Access to Justice, has concerns on “special road” projects and comments on the 6 week time period for the Environmental Statements to be commented on. | Please see attached for full response to comments |
| <u>Respondent 7</u> - No substantial comments | Noted |
| <u>Respondent 8</u> - Suggested a revision about size of land and cost of the project as to whether an EIA is required. | The view is that project cost is not a suitable indicator for use as a threshold to identify projects suitable for EIA. Indeed cost is not used a threshold in Schedule 2 of the 1999 Regulations. Furthermore we would not want to adopt revised thresholds or criteria which may reduce further the number of projects qualifying for EIA. |

Department for Transport and Welsh Assembly Government

Consultation on Draft Highways (Environmental Impact Assessment) Regulations 2006

CONSULTATION RESPONSE EVALUATION FORM

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| Respondent : Personal / Organisation ? Organisation | Response ref no. 005 |
| | Date response received: 14/12/06 |
| | Confidentiality requested? (Y/N) No |

| Chapter and Question | Y/N | Summary of respondent's comments | DfT / NAW comments and further DfT / NAW action to be taken, including any amendments to SI required |
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| Chapter 3 : Public Participation The UK is obliged to give effect to the Public Participation Directive. Do you have any comments on the way it is proposed to transpose the relevant parts of it into Part VA of the Highways Act 1980 ? | | In principle we agree with the way it is proposed to transpose the Directive into the Highways Act | Noted |
| Chapter 4 : Access to justice With reference to draft regulations 3(7) and 5 : (a) Is it appropriate to assimilate the procedure for legal challenge of the decision to proceed with a project, (as referred to in section 105B (6) of Part VA of the Act), with the procedures for legal challenge of any associated orders or schemes ? (b) Is it appropriate to incorporate a statutory requirement for the co-ordination and concurrent running (as far as practicable) of the Part VA procedures with the procedures for any statutory | | (a) We concur with the assimilation of the right to legal challenge through the provision of a statutory procedure for review. (b) However, we cannot accept the exclusion of any other legal challenge, i.e. judicial review. (c) Moreover, there is a view that the provision of a statutory right of challenge does not fulfil the requirements of the Directive as that course is prohibitively expensive for all but the wealthy and the small and diminishing number of people who are still eligible for legal aid. | (a) Noted. (b) We have considered this point but conclude that it would not be appropriate to accept it. The proposed new section 105D to the Highways Act 1980 would provide a statutory right of legal challenge to the decision of the Secretary of State or the National Assembly for Wales, as the case may be, to proceed with the construction or improvement to which the environmental statement relates. This decision is the final outcome of the deliberation process following full assessment and consideration of the proposals and representations received. It would not therefore seem appropriate to provide for two separate procedures for this decision to be challenged. |

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| <p>schemes and orders necessary to be promoted in connection with the same project ?</p> | | | <p>Nor would it seem necessary as the section 105D right would in effect be a statutory right to judicial review of the decision providing adequate opportunity for any legal arguments against the decision to be considered.</p> <p>The core legal procedures, (identified in paragraph 10 of Chapter 4 of the consultation paper), to authorise the construction and improvement of trunk road schemes are all statutory. Those procedures all provide for statutory rights of challenge to the High Court within a 6 week time limit, with identical or almost identical grounds of challenge, and with provision that the orders or schemes may not be challenged in any other legal proceedings. These statutory rights of challenge are instead of, not in addition to, any common law rights for judicial review.</p> <p>The proposed new section 105B (5A) would make it a statutory requirement to bring together the procedures and decisions on the related legal schemes and orders (in cases where there are any) so that the decision to proceed with the project is taken with, and in effect forms part of, the decisions on those matters. Indeed this reflects current practice.</p> <p>The Public Participation Directive requires that provision be made to allow a right of legal challenge of decisions to grant development consent for projects. Given the context that trunk road schemes in England and Wales are governed by statutory procedures, that those procedures incorporate statutory rights of challenge, and that those statutory rights of challenge are closely assimilated, it seems appropriate and desirable to address the requirements of the Directive by providing a statutory right of challenge, closely assimilated with the other challenge procedures.</p> <p>In practice major trunk road schemes usually require some form of statutory procedure such as a trunk road order, a special road scheme, and associated side roads order and compulsory purchase order. The decision on these schemes and orders is typically taken simultaneously as a package giving rise to a consistent statutory right of legal challenge subject to the same six week time limit. This means that if the</p> |
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| | | | <p>orders or schemes are not challenged within the time limit the trunk road authority will not be left exposed to the risk of a later High Court challenge to quash the orders or schemes after the contract for the construction of the project has been let.</p> <p>The Secretary of States', or the National Assembly's, decision letter setting out the decision whether or not to make the orders or schemes constitutes the decision whether or not to proceed with the project. This also constitutes the decision referred to in section 105B (6) of the Highways Act 1980 in cases where an environmental impact assessment has been made. That decision is subject to the relevant statutory legal challenge procedures referred to in paragraphs 11 and 16 of Chapter 4 of the consultation document, and may not be challenged in any other legal proceedings.</p> <p>A parallel common law right of judicial review of this decision cannot co-exist with these statutory legal challenge procedures because of the statutory bar on any other legal proceedings. (c) We do not share the view that a statutory right of challenge to the High Court would be prohibitively expensive for all but the wealthy and those eligible for legal aid. Furthermore if an alternative independent and impartial body was established or appointed to consider legal challenge applications it would not necessarily be any less expensive for applicants.</p> <p>As already outlined the existing statutory legal rights of challenge relating to the core trunk road procedures are exercised by application to the High Court. In cases where such orders or schemes are required, for the reasons outlined above, it would not be practical to segregate the decision on the orders or schemes from the decision to proceed with the project. So it would not be practical to have challenges to the former determined by the High Court but challenges under the proposed new section 105D determined by an alternative body.</p> <p>Providing for challenges to be determined by the High Court follows well established precedent, not only in highway law but in other areas of public law e.g. town</p> |
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| | | | and country planning. |
| Chapter 6 : Special road projects Is it appropriate for the criteria for determining whether "special road" improvements within Annex II of the EIA Directive need to be subject to EIA, to be assimilated as proposed in this chapter? | Y | Yes. | Noted |
| Chapter 10 : Regulatory Impact Assessment Do you have any general comments concerning the Regulatory Impact Assessment? | Y | It would be helpful if the document could have confirmed that the Department for Transport has ensured that its Regulations are consistent with the Environmental Information Regulations 2004. | We believe that the draft Regulations are consistent and compatible with the Environmental Information Regulations 2004. |
| Further comments | | [None] | |

Response checked by

Name:

Division:

Date : 21-12-06 and 10-1-07

Name:

Division:

Date :

Name:

Division:

Date :

Name:

Division:

Date :

Department for Transport and Welsh Assembly Government

Consultation on Draft Highways (Environmental Impact Assessment) Regulations 2006

CONSULTATION RESPONSE EVALUATION FORM

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| Respondent : Personal / Organisation ? Organisation | Response ref no. 006 |
| | Date response received: 15/12/06 |
| | Confidentiality requested? (Y/N) No |

| Chapter and Question | Y/N | Summary of respondent's comments | DfT / NAW comments and further DfT / NAW action to be taken, including any amendments to SI required |
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| Chapter 3 : Public Participation The UK is obliged to give effect to the Public Participation Directive. Do you have any comments on the way it is proposed to transpose the relevant parts of it into Part VA of the Highways Act 1980? | Y | We welcome the proposed changes to transpose the provisions of the Public Participation Directive. | Noted |
| Chapter 4 : Access to justice With reference to draft regulations 3(7) and 5 : (a) Is it appropriate to assimilate the procedure for legal challenge of the decision to proceed with a project, (as referred to in section 105B (6) of Part VA of the Act), | Y | (1) We do not feel that the present wording covers the main circumstances where judicial review can be sought. Judicial review is not limited to abuse of powers and/or procedure. In addition, a party can claim that the Secretary of State has been unreasonable, biased, taken irrelevant material into consideration and / or not taken relevant material into account. In our view, Section 105D(1) is unduly narrow in its wording | (1) The proposed High Court grounds of challenge follow the precedent of the grounds of challenge provided for the various trunk road orders and schemes referred to in paragraphs 10 and 16 of chapter 4 of the consultation paper. Similar grounds of challenge are provided in town and country planning legislation (sections 287 and 288 of the Town and Country Planning Act 1990). |

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| <p>with the procedures for legal challenge of any associated orders or schemes?</p> <p>(b) Is it appropriate to incorporate a statutory requirement for the co-ordination and concurrent running (as far as practicable) of the Part VA procedures with the procedures for any statutory schemes and orders necessary to be promoted in connection with the same project?</p> | <p>and does not cover these possibilities. We recommend that this Section be amended to include the other possibilities.</p> <p>(2) Secondly, the start of section 105D (1) refers to “a person aggrieved”. However, it is common law that a person does not have to show grievance or been personally affected by a decision in order to challenge. Additionally, this paragraph fails to reflect the spirit of the Aarhus Convention and Public Participation Directive, in particular their provisions on access to justice. We therefore question the necessity of the phrase “a person aggrieved” at the start of this section.</p> <p>(3) Thirdly, when considering members of the public and their right to challenge planning decision, the respondent feels that it would inappropriate to reduce the time limit for applying for permission to judicially review to six weeks, particularly considering the judgement (On Application of Burkett) v. London Borough of Hammersmith and Fulham [2002]UKHL 23). This judgement made it clear that although applications for judicial review should ideally be made within six weeks, it is sometimes appropriate for members of the public to be allowed three months.</p> | <p>It is well established in the decided cases that the courts interpret these grounds of challenge as being in effect a form of statutory judicial review and all the heads of claim referred to in this part of the respondent response would be valid grounds under the proposed section 105D. The possible arguments the respondent refers to would, if made out, show the trunk road authority had acted outside its powers.</p> <p>(2) Again the expression “a person aggrieved” is used in the legal challenge procedures applicable to the various trunk road orders and schemes referred to in paragraph 10 and 16 of chapter 4 of the consultation paper; (and also in sections 287 and 288 of the Town and Country Planning Act 1990).</p> <p>The courts interpretation of this phrase has been relaxed over the years such that a person does not have to have a legal grievance or be subjected to a legal burden before being regarded a person aggrieved in such a context. Decided cases indicate any person with a genuine grievance would be regarded as a person aggrieved. The expression “a person aggrieved” is still needed to allow the courts to be able to distinguish between persons with a genuine complaint and frivolous or vexatious complainants.</p> <p>We believe the proposed regulations do reflect the spirit of these measures and their provisions on access to justice. The word “person” as used in proposed regulation 105D includes any body of persons corporate or unincorporate (by virtue of section 5 and Schedule 1 of the Interpretation Act 1978).</p> <p>(3) The Public Participation Directive does not</p> |
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| | | | <p>prescribe the time limit for applications for legal challenge.</p> <p>In practice major trunk road schemes usually require some form of statutory procedure such as a trunk road order, a special road scheme, and associated side roads order and compulsory purchase order. As described in paragraphs 12 and 16 of Chapter 4 of the consultation document, all these procedures provide for a six week High Court challenge period and provide a statutory bar preventing any other legal challenges to their validity. This means that if the orders or schemes are not challenged within the time limit the trunk road authority will not be left exposed to the risk of a later High Court challenge to quash the orders or schemes after the contract for the construction of the project has been let.</p> <p>The decision on these schemes and orders is typically taken simultaneously as a package giving rise to a consistent statutory right of legal challenge subject to the same six week time limit. The Secretary of States', or the National Assembly's, decision letter setting out the decision whether or not to make the orders or schemes constitutes the decision whether or not to proceed with the project. This also constitutes the decision referred to in section 105B (6) of the Highways Act 1980 in cases where an environmental impact assessment has been made.</p> <p>As the decision to proceed with a project is bound up with and taken simultaneously with the decisions on the associated orders and schemes it would be unworkable to allow a longer time limit to challenge the decision to proceed with the project than applies to challenges to the associated orders and schemes.</p> |
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| <p>Chapter 6 : Special road projects Is it appropriate for the criteria for determining whether "special road" improvements within Annex II of the EIA Directive need to be subject to EIA, to be assimilated as proposed in this chapter?</p> | <p>Y</p> | <p>(a) We disagree that "special road" improvements should be subject to exclusive screening thresholds which automatically exclude projects below an arbitrary size from being subject to an individual assessment of their likely significant effects. The respondent remains opposed in principle to the use of exclusive thresholds in EIA and we believe the UK Government is in breach of the spirit of the EIA Directive in this respect.</p> <p>(b) We continue to believe that exclusive screening thresholds are particularly inappropriate for highways projects. There is always a major risk that extensions to motorways are likely to have significant effects regardless of their physical footprint, particularly through climate change impacts from the additional traffic supported and encouraged. Therefore, all projects should be formally screened on a case-by-case basis using the EIA Directive Annex III criteria. This should not be an onerous task. The minimal costs imposed should easily be outweighed by the long-term benefits of ensuring all projects likely to have a significant environmental effect are identified and subject to EIA.</p> <p>(c) The amendments and Act do not appear to make provision for requiring EIA for a series of projects which form part of an upgrade programme, and which taken together are likely to have significant effects, even though individually each is below the size threshold. This loophole encourages the splitting up of projects up to escape the EIA obligations in a situation termed</p> | <p>(a) Article 4(2) of the EIA directive expressly provides that for projects listed in Annex II of the directive Member States shall determine through a case by case examination or "thresholds or criteria set by Member States" whether a project shall be made subject to EIA. In England and Wales the 1 hectare threshold applies to local highway authority road improvement schemes within Annex II and also to trunk road improvement schemes within Annex II other than those for special roads. Hence it would be consistent to apply the same threshold to special road improvement schemes within Annex II.</p> <p>(b) This Chapter of the proposals is designed to remove the anomaly of the inconsistency of treatment of special road improvement schemes within Annex II and other road improvement schemes (i.e. both other trunk road schemes and also local highway authority schemes) within Annex II.</p> <p>The Secretary of State and the National Assembly are satisfied that the one hectare threshold is reasonable and appropriate and is set too low to allow schemes which should be made subject to statutory EIA to avoid such assessment.</p> <p>It is worth pointing out however that updated internal guidance issued by the Highways Agency requires some level of environmental assessment for schemes which will not be required to undergo statutory EIA under Part VA of the Act. (Interim Advice Notes 76-82/06 of July 2006 - updating the UK trunk road</p> |
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| | <p>'salami slicing'. Member states were urged by the European Commission¹⁴ to identify and remedy provisions in national legislation that may permit 'salami slicing'.</p> <p>(d) The fact that the Secretary of State or Welsh Assembly Government is both developer and competent authority for highways projects gives us even less confidence that the use of exclusive screening thresholds can achieve the requirements of the EIA Directive.</p> | <p>authorities' "Design Manual for Roads and Bridges"). This guidance is used by the National Assembly for their road projects too.</p> <p>(c) As indicated above, article 4(2) of the EIA directive permits Member States to use thresholds. The Report of the Commission (COM(2003) 334 final) on the application and effectiveness of the EIA Directive did not conclude that this or indeed any other provisions of the EIA directive should be further amended, indicating instead that further assessment and consideration would be required before such a conclusion could be reached. The Public Participation Directive makes no amendments to article 4(2). Although Member States were recommended to check their national legislation and remedy any shortcomings with regard to, amongst other matters, "salami slicing" the Secretary of State and the National Assembly are satisfied that the one hectare threshold is reasonable and appropriate and too low to give effective scope for "salami slicing". This is especially so bearing in mind the one hectare threshold includes "the area of the completed works together with any area occupied during the period of construction or improvement by requisite apparatus, equipment, machinery, materials, plant, spoil heaps or other such facilities". It should also be borne in mind that the threshold does not apply where any such area is situated in whole or in part in a sensitive area (SSSI, national park, AONB etc).</p> |
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14 European Commission 2002 Report from the Commission to the European Parliament and the Council on the application and effectiveness of the EIA directive (Directive 85/337/EEC as amended by Directive 97/11/EC). How successful are the member states in implementing the EIA directive.

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| | | | (d) The requirements of the EIA directive are reflected in Part VA of the Highways Act 1980 with which the Secretary of State and the National Assembly must comply in relation to their trunk road projects. Both authorities are in any event committed to taking a responsible approach to the environment and aim to minimise and mitigate any environmental effects projects may have. |
| Chapter 10 : Regulatory Impact Assessment Do you have any general comments concerning the Regulatory Impact Assessment? | Y | The respondent suggests that the DfT consider undertaking monitoring of requests by stakeholders for further time to comment on Environmental Statements. By keeping a record of such requests, the DfT can review whether 6 weeks is adequate for public participation or if this timescale should be lengthened. Such a system of review would seem more proactive and resource efficient than simply waiting for a potentially costly and lengthy legal challenge to arise - as currently proposed in this document. | Noted. The period of six weeks was chosen as this is the same period provided for all the other Highways Act 1980 statutory procedures referred to in paragraph 10 of Chapter 4 of the consultation document. The six week period is a minimum period. |
| Further comments | | [None] | - |

Response checked by **Name: RMcDonald** **Division: DfT LSD** **Date : 3-1-07 and 10-1-07**
Name: **Division:** **Date :**
Name: **Division:** **Date :**
Name: **Division:** **Date :**

To: Business Committee

From: Andrew Davies AM
Minister for Enterprise, Innovation and Networks

EXPLANATORY MEMORANDUM

HIGHWAYS, ENGLAND AND WALES

THE HIGHWAYS (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2007

Summary

These Regulations amend the procedures, contained in Part VA of the Highways Act 1980, for the environmental impact assessment of projects for the construction or improvement of highways for which in England the Secretary of State and in Wales the National Assembly for Wales (“the authorities”) are respectively the highway authority, i.e. trunk roads (and certain other highways).

1. This Memorandum is submitted to the Assembly's Business Committee in relation to The Highways (Environmental Impact Assessment) Regulations 2007, in accordance with Standing Order 25 section 3.
2. A copy of the Instrument is submitted with this Memorandum.

Enabling Power

3. The National Assembly for Wales has been designated under section 2(2) of the European Communities Act 1972 to make regulations for the purpose of implementing Community requirements for the assessment of highway projects likely to have a significant effect on the environment (EC Designation Order (SI 2000/2812)). The Assembly and the Secretary of State are acting together to make regulations for England and Wales; the Secretary of State as respects England and the Assembly as respects Wales. The consent of the Treasury to the making of these regulations is required under S56 (1) of the Finance Act 1973.

Effect

4. These Regulations would make three principal changes to Part VA of the Highways Act 1980 ('the Act').
 - Firstly, they transpose those provisions of Directive 2003/35/EC (the Public Participation Directive) which amends Directive 85/337/EEC (the Environmental Impact Assessment (EIA) Directive) with regard to public participation and access to justice. The Public Participation Directive is one of the legislative instruments that transpose the provisions of the United Nations Economic Commission for Europe's Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (known as the

Aarhus Convention) into Community Law. Article 3 of the Directive amends the Environmental Impact Assessment (EIA) Directive in order to align the public participation provisions of the EIA Directive with the Aarhus Convention and add provisions with regard to access to justice to comply with the Convention. These provisions help to ensure that the importance of the predicted environmental effects, and the scope for reducing them, are properly understood by the public and the relevant authority before it makes a decision;

- Secondly, the effect of regulation 3(2) is to apply the procedures in section 105A (3)(b) of the Highways Act 1980, (which set out the criteria for determining if projects within Annex II of Directive 85/337/EEC (the EIA Directive) should be subject to an environmental assessment), to “special road” projects of the Secretary of State and Assembly in the same way as these procedures apply to other highway projects of the Secretary of State and which are within Annex II. (“Special roads” are highways reserved for particular classes of traffic and are defined in section 16 of the Act - they are mostly motorways). This is in pursuance of Article 4 of the EIA Directive;
- Thirdly, they amend Part VA of the Act to reflect the application of Directive 85/337/EEC (the EIA Directive) to the European Economic Area (EEA) by Decision No.20/1999 of the European Economic Area Joint Committee of 26 February 1999 (regulations 2(2)(b), 3(6) and 4(2), 4(c), (5), (6) and (7)). The effect is to extend the application of Part VA to enable States which are EEA States but not also EC Member States, (i.e. Iceland, Liechtenstein and Norway), to participate in the procedures for notification and consultation on trunk road projects in England and Wales if they could have some environmental effect on those States.

Target Implementation

5. It is intended that these Regulations will go to Plenary on 21 March 2007 and then be forwarded to the Parliamentary Branch of the Department for Transport to lay before Parliament. The Regulations should come into force on 20 April 2007.

6. If the intended target date for Plenary is not met, it will delay the laying of this Regulation in Parliament, which will ultimately delay the coming into force date of the Joint Regulations in both England and Wales.

7. Failure to make these Regulations would almost certainly result in the European Commission continuing with infraction proceedings against the United Kingdom and the potential imposition of substantial fines if the case is referred to the European Court of Justice and until compliance has been achieved.

Financial implications

8. The changes introduced by these Regulations are largely procedural, but include publicity arrangements that have cost implications although these are

generally small and would be accommodated within existing administration cost budgets.

9. Part VA of the Highways Act 1980 presently provides for the environmental assessment of projects for the construction and improvement of highways for which the Assembly is the highway authority. The Public Participation Directive and these Regulations would impose some minor additional obligations on the Assembly. The consultation and publicity currently undertaken, and met from the existing budget, satisfies most of the requirements of the Environmental Impact Assessment (EIA) Directive. The anticipated additional procedural costs are likely to arise from the supplementary consultant and publicity costs involved in informing the public about the reasoning and decisions taken.

10. These additional costs are estimated to be £30,000 to £50,000 pa and would be met from the Improving Trunk Road Network budget of £56m pa ie just 0.05-0.09%.

Regulatory Appraisal

11. As these Regulations fall outside the definition of Assembly subordinate legislation in section 58 of the Government of Wales Act 1998, a Regulatory Appraisal is not required to be undertaken.

Consultation

With Stakeholders

12. A public consultation on the provisions of these Regulations was carried out between 21 September 2006 and 14 December 2006. The Department for Transport led this consultation on behalf of England and Wales. A list of those consulted is attached at Annex A.

13. Eight responses were received and a summary of the responses and the conclusions is at Annex B.

With Subject Committee

14. The Regulations were first notified to the then Economic Development and Transport Committee via the list of forthcoming legislation on 26 January 2006 (EDT(2) 02-06 (p.4)) and they are due to be considered by the Committee on 14 February 2007. They appeared on the list as The Highways (Assessment of Environmental Effects) (England and Wales) (Amendment) Regulations 2006.

15. The Regulations were also notified to the Environment, Planning and Countryside Committee via their forward look of the intention to make these Regulations, on 13 July 2006 (EPC(2)-11-06 (p9) Annex A. Meeting Reference: EPC2 16-06). The Committee did not identify them for scrutiny.

Recommended Procedure

16. Subject to the views of Business Committee, I recommend that these Regulations proceed to Plenary under the Standard procedure to give Assembly Members the opportunity to debate them.

Compliance

17. The proposed legislation will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 section 120);
- be compatible with the Assembly's scheme for sustainable development (section 121);
- be compatible with Community law (section 106);
- be compatible with the Assembly's human rights legislation (section 107); and
- be compatible with any international obligations binding the UK Government and the Assembly (section 108).

18. The information in this Memorandum has been cleared with the Legal Services Department (LS).

19. Drafting lawyer: Elaine Osborne, ext. 5663

20. Head of Division: Tony Parker, ext. 6252

21. Drafting Policy Officials: Harriet Cozens, ext. 5678
Russell Dewey, ext. 6515

ANDREW DAVIES

?? March 2007

MINISTER FOR ENTERPRISE, INNOVATION AND NETWORKS